Supreme Court, U.S.
FILED
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CLERK

(5)

No. 99-1396

IN THE
SUPREME COURT
OF THE UNITED STATES

JAMES L. CHANDLER, et al.,

Appellants,

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.

Appellees.

ON APPEAL FROM
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

OPPOSITION TO APPELLANTS' MOTION FOR CONSIDERATION PRIOR TO CONGRESSIONAL QUALIFYING ON MAY 8, 2000

The NAACP appellees,[1] the Meek appellees[2] and Congressman Alcee L. Hastings, by and through their undersigned counsel, file the following opposition to Appellants' Motion for Consideration Prior to Congressional Qualifying on May 8, 2000, and state the following:

1 The NAACP appellees are: Florida State Conference of NAACP Branches, Black Business Association, Gerald Adams, George Baldwin, Willie Brown, Alben Duffie, Larry D. Jones, Edwin L. Miller, Frankie S. Rolle, Elry Sands and Carolyn L. Williams.

2 The Meek appellees are: Congresswoman Carrie P. Meek, M. Athalie Range, Betty T. Ferguson, Marleine Bastieu, Dr. Bradford E. Brown, Bennie Moore, Ernest Mae ("Pinky") Sands and Miriam Urra

1. Appellants correctly state in their Motion that they are registered voters in south Florida and that they filed an action on April 2, 1998 invoking the principles of Shaw v. Reno, 509 U.S. 630 (1993). At present, appellants challenge only two Congressional Districts, the 18th and the 23rd Districts.[3] These two Districts were originally established by an Order of a three-judge District Court on May 29, 1992, almost six years prior to the filing of the Complaint. De Grandy v. Wetherill, 794 F. Supp. 1076 (N.D. Fla. 1992). In 1996, the Florida Legislature enacted a state-wide redistricting plan that adopted these two Districts without change from those established by Court Order. The 1992, 1994, and 1996 Congressional elections were held using these Districts.

2. After the Complaint was filed, the 1998 Congressional election was also held using these Districts. The appellants made no effort to obtain preliminary or permanent relief prior to the 1998 Congressional election.

3. In several orders, the District Court permitted (i) the three Congressional Representatives and two State Senators whose Districts were being challenged, (ii) some of their supporters, and (iii) the NAACP appellees to intervene as party defendants to defend the legality of the existing Districts. In other orders, the District Court permitted a Congressman from an adjoining District to intervene solely on issues of relief and the Department of Justice to appear as amicus curiae.

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[3] At the hearing held by the District Court on October 12, 1999, appellants abandoned their challenges to two State Senatorial Districts and to the 17th Congressional District. (APP. 2, 9). Throughout their Jurisdictional Statement, appellants refer to the 17th, 18th and 23rd Congressional Districts without differentiation and without acknowledgment that they lack standing to challenge the legality of the 17th Congressional District because none of them resides in that District. United States v. Hays, 510 U.S. 737 (1995).

4. In 1999, appellants' counsel negotiated a "settlement" with the counsel for the defendants originally named in the Complaint, all of whom were Florida state officials.[4] As the appellants concede in their Jurisdictional Statement, at p. 9, those "settlement discussions were intentionally conducted without the participation of most of the intervening defendants."[5] The Settlement Agreement would have changed the boundaries of eight Congressional Districts in south Florida, the three challenged in the original Complaint and five others. After the Settlement Agreement was reached, appellants and the appellee state officials moved the District Court for approval of the settlement and obtained postponement of the District Court hearing on pre-trial motions and of the trial date. Two of the appellee state officials, Governor Bush and House Speaker Thrasher subsequently disavowed their agreement to the settlement. (APP. 3.) As a result, the Florida Attorney General opposed the settlement at the hearing.

5. On October 25, 1999, the District Court disapproved the settlement and dismissed the Complaint on the grounds of laches. (APP. 1-10.)

6. After the District Court dismissed the case, appellants did not seek immediate relief from this Court. Instead, appellants waited the maximum ten-day period[6] and filed a "Motion to Alter and Amend Judgment and/or for Reconsideration of Final Order of

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4 Those state officers, who were sued in their official capacity, were the Secretary of State, the President of the State Senate, the Speaker of the State House of Representatives and the Governor.

5 Also ignorant of the settlement was at least one of the plaintiffs, Charles Bertheas, the only plaintiff with standing to challenge the 23rd Congressional District, which District the 'settlement" proposed to change.

6 See Federal Rules of Civil Procedure, Rule 59(e).

Dismissal on Grounds of Laches" on November 4, 1999. That Motion presented nothing new. As the District Court stated:

> This is the third time that Plaintiffs have made this argument. It has been rejected before, and raises nothing new here. Moreover, in making this argument for the third time, the Plaintiffs once again utterly fail to address the case law cited by this Court in support of the application of laches to the instant case.

(APP 25-26.) The District Court denied this Motion on December 17, 1999.

7. Following the denial of this Motion, appellants again did not seek prompt relief from this Court. Instead, appellants waited twenty-seven days before filing a notice of appeal (APP. 27) and another thirty-six days before mailing a Jurisdictional Statement and the present Motion to this Court. Having taken almost four months from the decision of the District Court on October 25, 1999 to file their Jurisdictional Statement with this Court, appellants now move this Court "to consider the issues raised in their jurisdictional statement ... prior to the opening of qualifying for congressional elections in the State of Florida on May 8, 2000".[7]

8. In their Jurisdictional Statement, appellants raise two issues:

a. whether parties who intervened to defend the existing Districts may bar a settlement between the appellants and the state by withholding their consent; and

b. whether the District Court should have dismissed the action based on laches. The appellants argue that racially gerrymandered election Districts will constitute an ongoing violation because

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[7] The deadlines for qualifying as a candidate in a Florida Congressional election begin on April 17, 2000, the date by which candidates who wish to qualify by the "alternative" petition method must submit petitions containing signatures from 1% of the registered voters in the geographical area of their candidacy.

those Districts will be used by the Department of Justice following the 2000 census as the baseline for preclearing new election Districts under Section 5 of the Voting Rights Act. On this issue, appellants rely on Reno v. Bossier Parish School District, ___ U.S.____, Docket #98-405 (January 24, 2000).

Because neither issue has merit, the appellees will ask this Court to dismiss this appeal or, in the alternative, to affirm.

9. The appellants' request for an early "consideration of the issues raised" is premised solely on their claim that the District Court wrongly denied the Motion to Approve the Settlement because of the objections of intervenor defendants. Appellants make no claim that they will be prejudiced by any delay in this Court's decision on the second issue stated above, i.e, whether the allegedly illegal Congressional Districts will have a continuing effect after the 2000 census, thus preventing the dismissal of the action on the basis of laches.[8]

10. Appellants' Motion should be denied because appellants failed to seek prompt relief from this Court following the October 25, 1999 dismissal of this action and failed again to seek prompt relief from this Court following the December 17, 1999 denial of their post-

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[8] As a result, this Opposition will not deal with the laches question except to point out that none of the appellants reside in a County subject to Section 5 of the Voting Rights Act. Hence, whether the Congressional Districts in which they vote will be subject to preclearance will depend upon whether Florida, after considering the 2000 census data, elects to include their residences in Congressional Districts that also include some portion of a County subject to Section 5. Appellants lack standing to make a claim of harm under Section 5 in this action because that claim is both conjectural and hypothetical. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Moreover, appellants' claim in this action is a constitutional one that cannot be prejudiced by any action by the Department of Justice in preclearing Congressional Districts.

trial Motion. After having waited so long before seeking relief from this Court, appellants are presumptuous in asking this Court to adjust its schedule.

11. Appellants' Motion should be denied because it is premised on an erroneous assumption. The Motion implicitly assumes that this Court's "consideration of the issues raised ... prior to May 8, 2000" might result in promulgation by this Court or the District Court of the new Congressional Districts contained in the Settlement Agreement in time for candidates to qualify for Congressional elections in those Districts prior to the deadline for such qualifying on May 11, 2000. This assumption is wrong for three reasons:

(1) A settlement cannot be approved over the objections of those appellees who intervened as defendants in the District Court to defend the legality of the existing districts. As the District Court held (APP. 4), this Court's decision in Lawyer v. Department of Justice, 521 U.S. 567, 117 S. Ct. 2186 (1997) does not provide an exception to this established rule.[9] Lawyer acknowledges that "a settlement agreement subject to court approval in a nonclass action may not impose duties or obligations on an unconsenting party or 'dispose' of his claims." Id. at 2194. In the present case, the intervening appellees' claims that the current Congressional Districts are legal would be adversely disposed of by the proposed settlement.

(2) The settlement was disavowed by certain of the defendant Florida state officials prior to its consideration by the District Court. Indeed, at the hearing before the District Court, the Attorney General urged the Court to disapprove it. Congressional redistricting is in the first instance, a state function.

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[9] Mr. Lawyer's claims were vindicated by the settlement approved by this Court over his objection. Indeed, this Court characterized him as a "sore winner." Id. at 2194.

Id. at 2192-93. Neither this Court nor the District Court can approve a settlement over the objection of the Florida Attorney General.

(3) Any settlement of this action must be approved by the District Court. Id. at 2193. Because the District Court ruled that the settlement could not proceed without the concurrence of the appellees who had intervened, it never addressed the substance of the objections that those intervenors had raised. Under any interpretation of its authority, the District Court, before it could have approved the Settlement Agreement, was still obligated to consider the substance of those objections. It never did. Even if this Court were to "consider ... the issues raised prior to ... May 8, 2000", there would still not be time for consideration of the proposed Settlement Agreement by the District Court[10] prior to the commencement of the proceedings for the Congressional election to be held this year.

Thus, appellants' assumption is wrong. Even if this Court were to consider the issues raised prior to May 8, 2000, neither this Court, nor the District Court, could grant the appellants the relief they seek, promulgation of the Congressional Districts contained in the Settlement Agreement, prior to the commencement of Florida's Congressional election processes. There is, therefore, no reason for haste.

12. The two Congressional Districts challenged by the appellants were established by a federal District Court and ratified by the Florida Legislature. They are facially

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10 Among other things, the District Court would have to consider whether to approve Congressional Districts that the appellants themselves described as being "racially-proposed gerrymandered". (See, Plaintiffs' Motion for Summary Judgment on the Liability Phase of Count I of Plaintiffs' Complaint Concerning Congressional Districts dated September 3, 1999, at p. 5, n.8.)

race-neutral and presumptively valid. Hunt v. Cromartie, ___U.S. ____, 119 S. Ct. 1545 (1999). Under the opinions of this Court, appellants would have the substantial burden of proving that race, rather than legitimate legislative or political purposes like preserving incumbents or preserving the partisan balance of the Florida Congressional delegation, was the predominant motive in the creation of those Districts. Id. This Court cannot assume that the appellants would sustain their burden at trial.

WHEREFORE, the appellees listed above respectfully request this Court to deny Appellants' Motion for Consideration Prior to Congressional Qualifying on May 8, 2000.

Dated: February 28, 2000

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